

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

MARION MISIAK and MARY BETH MISIAK,)	
Plaintiffs,)	
)	NO: 07 C 6330
vs.)	
)	Judge Darrah
MORRIS MATERIAL HANDLING, INC.,)	
a Foreign Corporation d/b/a P&H CRANES,)	Magistrate Judge Nolan
P&H CRANES, Individually and as a Division)	
of MORRIS MATERIAL HANDLING, INC.,)	
WHITING CORPORATION, a Foreign)	
Corporation, HUBBELL INCORPORATED, a)	
Foreign Corporation d/b/a GLEASON REEL)	
CORP., and GLEASON REEL CORP., a Foreign)	
Corporation a/k/a GRC INTERNATIONAL,)	
Individually and as a Division of HUBBELL)	
INCORPORATED,)	
Defendants.)	

MOTION TO PRESERVE EVIDENCE

Defendant, Morris Material Handling, Inc. f/k/a SPH Crane & Hoist, Inc. d/b/a Morris Material Handling, by and through its attorneys, JOHNSON & BELL, LTD., and moves this Honorable Court for an order allowing removal, transport and storage of evidence related to this case for the reasons states as follows:

1. This case involves an accident involving an overhead crane at the Union Tank Car facility in East Chicago, Indiana.
2. Union Tank Car has advised the parties that the facilities, including the crane involved, are subject to sale, and/or demolition, if the evidence, including portions of the crane, are not removed by September 1, 2008. The parties have discussed removal of the trolley of the crane, the control boxes, the festoon and pendant control, as well as the hook block and spreader

bar used at the time of the accident. Union Tank Car has advised that it will allow the parties to take control of all of those items, but only if it is done before September 1, 2008.

3. Thomas Andrews as counsel for Morris Material Handling, agreed to make arrangements for removal of the evidence from Union Tank Car. In that regard, he has obtained a bid from Crane America for removal of the items from the Union Tank Car facility. That removal entails some destruction of component parts of the crane. Specifically, physically cutting the "C-track" from the crane to allow the festoon to be removed intact, as well disconnecting collector arms from the bridge and disconnecting the control boxes from the bridge.

4. A bid was received from Crane America, which is attached. It sets out what Crane America will do to remove the evidence from Union Tank Car. Crane America has scheduled such work commencing August 16, 2008.

5. Industrial Transportation System, Inc. by its Divisions and Subsidiaries, Industrial Storage Warehouse, Industrial Trucking Group, Inc. and Industrial Transportation System, Inc., have agreed to transport and store the evidence from Union Tank Car. The estimated cost of transporting the evidence is currently \$350, but is dependent upon more exact measurements of weight and size of the materials. Storage is estimated to be between \$1,000 and \$1,500 per month, again, dependent upon the size of the materials. The storage facilities are indoors, and cranes and other equipment are available at the facility to allow placement of the evidence safely.

6. All parties have agreed to share the costs of the removal, transportation, and storage of the evidence.

7. Because only one party, Morris Material Handling, by its counsel has made these arrangements, Defendant seeks a court order allowing the removal, transportation, and storage of

the evidence, as well as an order indicating that all parties are sharing in the costs, and that any required advanced payment made by or on behalf of Morris Material Handling will be reimbursed on equal shares of the Plaintiff and three Defendants.

8. Attached to this motion is a proposed agreed order, which is being forwarded to the parties with a copy of the motion. Parties that have not seen the proposed order may yet request modifications to it.

WHEREFORE, Defendant, Morris Material Handling, Inc. f/k/a SPH Crane & Hoist, Inc. d/b/a Morris Material Handling, moves this Honorable Court for an order allowing removal, transport and storage of evidence as stated above.

Respectfully submitted,

JOHNSON & BELL, LTD.

/s/ Thomas J. Andrews

One of the Attorneys for Defendant, Morris Material Handling, Inc. f/k/a SPH Crane & Hoist, Inc. d/b/a Morris Material Handling,

Thomas J. Andrews, Esq.
Joseph B. Carini, Esq.
Joshua S. Singewald, Esq.
JOHNSON & BELL, LTD.
33 West Monroe Street - Suite 2700
Chicago, Illinois 60603
(312) 372-0770
#1915523



August 1, 2008

Quote #32-40254-2

Johnson and Bell
33 W. Monroe
Suite 2700
Chicago, IL. 60603

Attention: Thomas J Andrews

Subject: Removal of Trolley and Controls

Dear Thomas,

Crane America Services welcomes this opportunity to be of service and offers the following for your consideration

- 1) disconnect collector arms from the bridge, if necessary, labeling as proceeding
- 2) cut the "c-track" (the track that holds the festoon)
- 3) disconnect and label the bridge control wiring
- 4) disconnect the control boxes from the bridge of the crane (either unbolt or cut) leaving the control boxes and wiring to and from those boxes intact
- 5) lower the trolley, control boxes and festoon (including the pendant control) to the ground, leaving intact all wiring from the pendant control to the festoon, from the festoon to the control boxes, and all wiring from the control boxes to the trolley and hoist.
- 6) place all part removed from the crane on truck
- 7) place the tank shell, lifting beam, and hook block on truck

Total \$11,945.00

Quote includes equipment rental and labor as mentioned above

Quote does not include trucking to storage facility or storage of removed components

Fort Wayne Division

3404 Metro Drive, Suite C • Fort Wayne, IN 46818
(260) 373-1258 • (866) 287-5215 • FAX: (260) 373-1259

E-Mail Address: jerry.britt@craneamerica.com

A wholly owned subsidiary of Demag Cranes and Components



Crane America accepts no liability for condition of crane or any of its components, prior to completing said work.

CUSTOMER RESPONSIBILITIES:

Provide clear work area and access to work area. Provide required foundations. Provide load test weights.

Freight, Delivery & Rental Equipment

All freight, delivery charges to Avilla Indiana and rental equipment are not included in the price.

NOTE: Sales Tax Is NOT Included In Our Pricing

***Payment Terms: 1/3 With Order, 1/3 2-Weeks Before Delivery, 1/3 Net 30 days
This proposal is valid for 30 days.***

Crane America Services is dedicated to customer satisfaction. We hope the above meets with your approval and that we will be favored with your valued order.

Please call with any questions or if I can be of further service to you.

Thank you for the opportunity.

Sincerely,

CRANE AMERICA SERVICES

Jerry Britt

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TERMS AND CONDITIONS

Standard Service and Repairs

- In addition to the following terms, all services performed and all orders and sales of goods supplied by CRANE AMERICA SERVICES shall be subject to our standard **TERMS AND CONDITION OF SALE** dated 01/08 attached or available on our website at www.craneamerica.com.
- Terms of payment are net 30 days upon completion and billing. All payment terms are subject to prior credit approval.
- Unless otherwise noted in the proposal scope, all work is quoted based upon "free and clear access" to the worksite and equipment. Work shall be performed during regular "straight-time" hours of 7am to 5pm, Monday through Friday.
- Unless otherwise noted in the proposal scope, customer will furnish safe means to access equipment that is not safely accessible for work being performed using a standard extension ladder. If special lift equipment is required and supplied by CRANE AMERICA SERVICES, it will be charged in addition at the prevailing rental and delivery rates.
- The itemized pricing for the above repair proposal is based upon all items being purchased by the customer and all repairs being scheduled at the mutual convenience of the customer and CRANE AMERICA SERVICES to maximum efficiency. Pricing of individual line items may need to be increased to adjust for travel time and actual work time if less than the entire work outlined in the proposal is purchased.
- Repair pricing is based upon inspection and examination of accessible parts and components and the repair or replacement of parts noted on the quotation. If additional parts or components are found to require repair or replacement upon commencement of requested repairs, customer will be notified for approval of additional work and costs required to properly complete the repair.
- Unless otherwise noted, prices quoted do not include applicable taxes and inbound / outbound freight charges. These will be charged in addition to the quoted amounts
- Materials are quoted FOB shipping point.
- Quote valid for 30 days.

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**ILLINOIS COMMERCE COMMISSION
TRANSPORTATION DIVISION
PUBLIC CARRIER CERTIFICATE**

141394 MC
Industrial Trucking Group, Inc.
no dba

Pursuant to the provisions of the Illinois Commercial Transportation Law (625 ILCS 5/18c-1101 et seq.) this certificate authorizes the above-named motor carrier to operate in interstate commerce transporting:

**ANY AND ALL COMMODITIES (Except Household Goods)
TO AND FROM ALL POINTS IN ILLINOIS.**

The privilege conveyed by this certificate is conditioned upon compliance with all applicable provisions of State Law and rules.

The vehicles of this certificate holder must be identified in accordance with 92 Ill. Adm. Code 1307.

The holder of this license certifies to the Commission that it will perform transportation activities only with the lawful amount of insurance in accordance with 92 Ill. Adm. Code 1425.

Issue Date: July 27, 2006

Director of Processing
Transportation Division



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

400 7th Street SW
Washington, DC 20590

SERVICE DATE
August 03, 2006

CERTIFICATE
MC-545028-C
INDUSTRIAL TRUCKING GROUP INC
CHICAGO, IL

This Certificate is evidence of the carrier's authority to engage in transportation as a **common carrier of property (except household goods)** by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387) and the designation of agents upon whom process may be served (49 CFR 366). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

A handwritten signature in black ink, appearing to read "Angeli Sebastian".

Angeli Sebastian, Chief
Information Systems Division

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

CMO

Form **W-9**
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
INDUSTRIAL TRUCKING GROUP, INC.

Business name, if different from above

Check appropriate box: ☐ Individual/
Sole proprietor

☒ Corporation

☐ Partnership

☐ Other ▶

☐ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)

4343 WEST OHIO STREET

City, state, and ZIP code

CHICAGO, IL. 60624

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

_____|_____|_____|_____|_____|_____|

or

Employer identification number

2|0|3|8|6|7|9|8|8

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign
Here

Signature of
U.S. person ▶

Bruce Van Wagoner

Date ▶

10/4/06

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

PM-25
(Rev. 10/84)

INTERSTATE COMMERCE COMMISSION
LICENSE

SERVICE DATE

MAY 19 1986

No. MC-190372

INDUSTRIAL TRANSPORTATION SYSTEMS, INC.
Chicago, IL

This License is evidence of the applicant's authority to engage in operations as a broker.

This authority will be effective as long as the broker maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043) and the designation of agents upon whom process may be served (49 CFR 1044). Applicant shall also render reasonably continuous and adequate service under this authority. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or will be, attached to this privilege.

The service to be performed is described on the reverse side of this document.

By the Commission.

JAMES H. BAYNE
Secretary

(SEAL)

NOTE: If there are any discrepancies regarding this document, please notify the Commission within 30 days.

No. MC-190372

To engage in operations, in interstate or foreign commerce, as a broker in arranging for the transportation, by motor vehicle, of general commodities (except household goods), between points in the United States.

W-9
Form
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
INDUSTRIAL TRANSPORTATION SYSTEMS, INC.

Business name, if different from above

Check appropriate box: ☐ Individual/
Sole proprietor ☒ Corporation ☐ Partnership ☐ Other ☐ Exempt from backup
withholding

Address (number, street, and apt. or suite no.)
4343 WEST OHIO STREET

City, state, and ZIP code
CHICAGO, IL. 60624

List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								
or								
Employer identification number								
3	6	3	3	8	6	8	0	0

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

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**Sign
Here**

Signature of
U.S. person

[Signature]

Date

10/04/06

Purpose of Form

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U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

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Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

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MARION MISIAK and MARY BETH MISIAK,)	
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)	
MORRIS MATERIAL HANDLING, INC.,)	Judge Darrah
a Foreign Corporation d/b/a P&H CRANES,)	
P&H CRANES, Individually and as a Division)	Magistrate Judge Nolan
of MORRIS MATERIAL HANDLING, INC.,)	
ET AL.,)	
Defendants.)	

PROPOSED AGREED ORDER

THIS CAUSE COMING ON TO BE HEARD on Defendant, Morris Material Handling, Inc.'s Motion to Preserve, Transport and Store Evidence, due notice having been given, and the court being fully advised in the premises:

IT IS HEREBY ORDERED:

1. That the evidence identified in the attached proposal from Crane America (pursuant to the Protocol in that proposal), will be carried out.
2. The parts identified in the proposal from Crane America attached to the motion will be transported and stored by Industrial Transportation System, Inc. by its Divisions and Subsidiaries, Industrial Storage Warehouse, Industrial Trucking Group, Inc. and Industrial Transportation System, Inc.
3. The costs of such removal, transportation and storage of the evidence will be paid equally by Plaintiff, Hubbell/Gleason, Whiting, and Morris Material Handling.

....., 2008

ENTERED:

.....

Thomas J. Andrews, Esq.
Joseph B. Carini, Esq.
Joshua S. Singewald, Esq.
JOHNSON & BELL, LTD.
33 West Monroe Street - Suite 2700
Chicago, Illinois 60603
(312) 372-0770